

P✓

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	09/938,663	KANEKO ET AL.
	Examiner	Art Unit
	Seung C. Sohn	2878

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 25 June 2003 & 26 September 2003.
2.  The allowed claim(s) is/are 1-7.
3.  The drawings filed on 27 August 2001 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

5.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a)  The translation of the foreign language provisional application has been received.
6.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No. \_\_\_\_\_
  - (b)  including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).**

9.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- 1  Notice of References Cited (PTO-892)
- 2  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No. \_\_\_\_\_
- 4  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
- 5  Notice of Informal Patent Application (PTO-152)
- 6  Interview Summary (PTO-413), Paper No. \_\_\_\_\_
- 7  Examiner's Amendment/Comment
- 8  Examiner's Statement of Reasons for Allowance
- 9  Other

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election with traverse of Species I on September 26, 2003 is acknowledged. The traversal is on the ground(s) that "it could not possibly be a serious burden to examine claims directed to the different embodiments, particularly since the examiner has already considered and performed a prior art search for claims directed to the different embodiments". This is not found persuasive because the Election of Species requirement issued on August 26, 2003 is based on the fact that the claimed invention has patentably distinct species, not the criteria under MPEP 803.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Furthermore, the fact that search for two inventions overlaps does not necessarily eliminate a serious burden in examining two different inventions.

The requirement is still deemed proper and is therefore made FINAL.

2. **Claims 8-28** are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or

linking claim. Applicant timely traversed the restriction (election) requirement of August 26, 2003.

#### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows: **Claims 8-28** are cancelled.

#### ***Allowable Subject Matter***

4. **Claims 1-7 are allowed.**  
5. The following is an examiner's statement of reasons for allowance:

**Claims 1-7** are allowable because the prior art fails to disclose or make obvious, either singly or in combination, a display image quality measuring system comprising, in addition to the other recited features of the claim, "a controller which determines reliability of the said first data and said second data and an AF driver which moves a focusing lens of said sighting telescope optical system to bring said sighting object into focus in accordance with one of said first data and said second data which has been determined to be reliable by said controller".

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

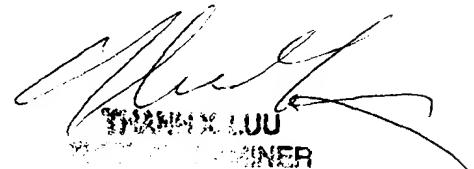
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seung C. Sohn whose telephone number is (703) 308-4093. The examiner can normally be reached on Monday through Friday from 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on (703) 308-4852. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

SCS  
scs

  
THANH X. LUU  
PATENT EXAMINER